

1
2
3
4
5
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
6
7
8

9 Daniel Davenport,

10 Petitioner,

11 v.

12 Unknown Birkholz,

13 Respondent.
14

No. CV-23-01362-PHX-DJH

ORDER

15 This matter is before the Court on Daniel Davenport’s (“Petitioner”) *pro se*
16 Petition for Writ of Habeas Corpus by a Person in Federal Custody (the “Petition”)
17 pursuant to 28 U.S.C. § 2241 (Doc. 1), and the Report and Recommendation (“R&R”)
18 (Doc. 14) issued by United States Magistrate Judge Deborah M. Fine on December 27,
19 2023. The R&R recommends that Bryan Hudson, Interim Warden, Federal Correctional
20 Institution in Phoenix, Arizona (“FCI Phoenix”) be substituted as Respondent in this
21 case. (Doc. 14 at 13). It also recommends the dismissal of the Petition. (*Id.*)

22 The R&R also advised the parties that they had fourteen days to file objections and
23 that the failure to timely do so “may result in the acceptance of the Report and
24 Recommendation by the district court without further review.” (*Id.*) Petitioner has not
25 filed an objection and the time to do so has expired. Respondents have also not filed an
26 objection. Absent any objections, the Court is not required to review the findings and
27 recommendations in the R&R. *See Thomas v. Arn*, 474 U.S. 140, 149 (1989) (noting that
28 the relevant provision of the Federal Magistrates Act, 28 U.S.C. § 636(b)(1), “does not on

1 its face require any review at all . . . of any issue that is not the subject of an objection.”);
2 *Reyna-Tapia*, 328 F.3d at 1121 (same); Fed.R.Civ.P. 72(b)(3) (“The district judge must
3 determine de novo any part of the magistrate judge’s disposition that has been properly
4 objected to.”).¹

5 Nonetheless, the Court has reviewed Judge Fine’s thorough R&R and agrees with
6 its findings and recommendations. The Court will, therefore, accept the R&R, order
7 substitution of Bryan Hudson, Interim Warden, Federal Correctional Institution in
8 Phoenix, Arizona (“FCI Phoenix”) as Respondent and dismiss the Petition. *See* 28
9 U.S.C. § 636(b)(1) (“A judge of the court may accept, reject, or modify, in whole or in
10 part, the findings or recommendations made by the magistrate judge.”); Fed.R.Civ.P.
11 72(b)(3) (same).

12 Accordingly,

13 **IT IS ORDERED** that the R&R (Doc. 14) is **accepted** and **adopted** as the Order
14 of this Court.

15 **IT IS FURTHER ORDERED** that Bryan Hudson, Interim Warden, Federal
16 Correctional Institution in Phoenix, Arizona (“FCI Phoenix”) shall be substituted as
17 Respondent in this case. The Clerk of Court is directed to update the docket accordingly.

18 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus
19 pursuant to 28 U.S.C. § 2241 (Doc. 1) is **denied**. The Clerk of Court shall terminate this
20 action and enter judgment accordingly.

21 Dated this 14th day of February, 2024.

22 
23 Honorable Diane J. Humetewa
24 United States District Judge

25

26

27 ¹ Judge Fine also expressly told the parties that her “recommendation is not an order that
28 is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal
pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
until entry of the District Court’s judgment.” (Doc. 14 at 13). On January 10, 2024,
Plaintiff nonetheless prematurely filed a Notice of Appeal (Doc. 15).